

**BEFORE THE THREE MEMBER DUE PROCESS HEARING PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO SECTION 162.961, RSMo.**

IN RE Student

By his parent

vs.

Springfield R-12 School District

COVER SHEET

PETITIONER

Student's Name: Student

DOB:

Grade Level: Seventh

Parent's Name(s): Student's Father

Address:

Representative: Les Boyle

Address: National Office Park
1911 South National, Suite 303
Springfield, MO 65804

RESPONDENT

Local Education Agency: Springfield R-12 School District (LEA)

Address:

Representative: Mr. Ransom A. Ellis, III

Address: The Hammons Tower, Suite 600
901 St. Louis Street
Springfield, MO 65806-2505

Hearing Dates: August 15-16, 2005

Date for Mailing of Decision: September 16, 2005

Date of Decision: September 16, 2005

Panel Members: Dr. Terry Allee
Ms. Leigh Bush
Ms. Margaret M. Mooney, Chairperson

ISSUES For HEARING

The issues for Hearing were:

1. Did the School District fail to identify Student pursuant to its child find obligations in the 2003-2004 school year? and
2. Did the School District provide a suitable program for student under the IDEA?

TIME LINE INFORMATION

Student's Father filed a due process Complaint, by letter, with the Missouri Department of Elementary and Secondary Education ("DESE") dated June 10, 2005, which was received by DESE that same day.

The original deadline for mailing the decision in this matter was July 25, 2005. On June 28, 2005, the District requested an extension of the time lines through September 30, 2005.

On July 8, 2005, the Hearing Chair issued an Amended Notice of Hearing, setting the matter for hearing on August 15 and 16, 2005 in Springfield, Missouri and extended the applicable time lines to September 16, 2005 for mailing of the decision.

The Hearing in this matter began on August 15, 2005 and was concluded, and the record was closed, on August 16, 2005, in Springfield, Missouri.

Findings of Fact and Conclusions of Law were filed by counsel for both parties. Counsel for School District also filed a legal memo.

The unanimous Decision was mailed to counsel for both parties by certified mail on September 16, 2005

**BEFORE THE HEARING PANEL
EMPOWERED BY THE MISSOURI
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

IN THE MATTER OF:)	
)	
STUDENT,)	
)	
Student/Petitioner)	
v.)	
)	
SPRINGFIELD R-12 SCHOOL DISTRICT,)	
)	
Respondent)	
)	

DECISION AND ORDER

This Due Process Hearing convened on August 15 and 16, 2005 in a conference room of the Springfield R-12 School District. Present at both sessions were Hearing Panel Members Margaret M. Mooney, Terry Allee and Leigh Bush. Also present were Parent (“Parent” or “Father”) with Les Boyle, counsel for Parent and Carl Benjamin Franklin, School District representative with Ransom A. Ellis III, counsel for the Springfield R-12 School District (“School District”)

Background

Petitioner’s request for due process was sent to the Department of Elementary and Secondary Education (“DESE”) on June 10, 2005, a decision was initially due by July 25, 2005. On June 26, 2005, the Hearing Chair issued an Order setting this matter for Hearing on July 19, 2005 and that a decision would be mailed by July 25, 2005. On June 28, 2005, Counsel for School District requested a continuance of the Hearing. The Hearing was rescheduled to August

15-16, 2005 by agreement of counsel. On August 5, 2005 Counsel for Parent requested an extension of time, which was opposed by the School District. After telephone conferences with counsel, it was agreed by both parties that the Hearing would remain on August 15-16, 2005 with the decision to be rendered and mailed by September 16, 2005.

The Hearing was convened on August 15, 2005. Parent and School District were represented by Counsel. Hearing Panel Exhibits 1-17 were marked and received into evidence. Parent renewed his request for a continuance for the sole purpose of receiving into evidence the medical records of student at The Menninger Clinic, Houston, Texas that were not yet in hand. Counsel for School District objected to continuing the Hearing or holding the record open for the purpose of receiving such medical records into evidence.

At the Hearing (a) Parents were represented by counsel; (b) Parents elected to close the Hearing to the public; (c) Student was not present. There were no opening statements. Parent presented testimony of two witnesses: Father and Christopher Carlin, Ph.D. School District cross-examined Parent's witnesses and offered testimony of three witnesses: Carl Benjamin Franklin, Suzanne Worrall and Mary Elizabeth Flood. Counsel for Father cross-examined all District witnesses.

The issues for Hearing were:

1. Did the School District fail to identify Student pursuant to its child find obligations in the 2003-2004 school year? and
2. Did the School District provide a suitable program for student under the IDEA?

These issues were agreed to by the parties at a phone conference and again at the Hearing to be the only issues triable by the Due Process Hearing Panel, appointed pursuant to R.S. Mo. §162.961 and under the IDEA 20 U.S.C. §§1412 et seq.

All Exhibits 1 to 75 (as supplemented) marked by the School District were received into evidence. All Exhibits 1 to 31 and 33 (as supplemented) marked by the Parent were received into evidence. At the conclusion of the testimony on August 16, 2005, there were no closing arguments. It was agreed by the parties that post-hearing briefs would be filed by August 30, 2005 and that the date for mailing the Decision would remain September 16, 2005.

The Hearing Panel makes the following Findings of Fact, Conclusions of Law and Order:

I. FINDINGS OF FACT

1. Student ("Student") is a child with a disability, who attends school in the Springfield R-12 School District ("District"). At all times relevant to this due process proceeding, the Student lived with his Father, who resides within the boundaries of the District. The primary mode of written and spoken communication of the Student and his Parents is English.
2. District is an "urban school district" located in Greene County, Missouri. The District operates more than fifty (50) buildings and has more than eighteen thousand (18,000) students. Approximately three thousand (3,000) students in the District receive special education and related services from the District.
3. Student and his Father were represented in this proceeding by attorney Les Boyle, National Avenue Office Park, 1911 South National, Suite 303, Springfield, MO 65804.

4. District was represented by attorney Ransom A. Ellis, III, Ellis, Ellis, Hammons & Johnson, P.C., The Hammons Tower, Suite 600, 901 St. Louis Street, Springfield, MO 65806-2505.

5. The Hearing Panel for this due process proceeding was:

Ms. Margaret M. Mooney, Hearing Chair

Dr. Terry Allee, Panel Member

Ms. Leigh Bush, Panel Member

6. Student's Father filed for due process by letter dated June 10, 2005, to the Department of Elementary and Secondary Education ("DESE"). The original deadline for mailing the decision in this matter was July 25, 2005.

7. On June 21, 2005 Ms. Pam Williams notified the Hearing Chair and the Hearing Panel Members that they had been selected to serve on the hearing panel for the due process Complaint filed by the Student's Father.

8. On June 26, 2005 the Hearing Chair notified the parties that the due process hearing would be held on July 19, 2005 and a written decision rendered by July 25, 2005.

9. On June 26, 2005 the Hearing Chair issued a Notice of Hearing, setting the due process hearing for July 19, 2005.

10. On June 28, 2005, the District requested an extension of the applicable time lines through September 30, 2005.

11. On July 8, 2005, after a telephone conference with counsel for both parties, the Hearing Chair issued an Amended Notice of Hearing setting the matter for hearing on August 15 and 16, 2005 in Springfield, Missouri and extended the time lines to September 16, 2005.

12. On August 5, 2005, Counsel for the Student filed a First Amended Request for Due Process Hearing.

13. On August 5, 2005, Counsel for the Student filed a Motion for Continuance with the Hearing Chair. (HP Ex. 12). On August 5, 2005, Counsel for the District filed an Opposition to Petitioner's Motion for Continuance with the Hearing Chair.

14. The Hearing Chair communicated with Counsel for the Parties by telephone regarding the issues and the request for continuance, it was agreed to keep the scheduled hearing dates.

15. At the Hearing, Father's renewed Motion for Continuance was denied by the Hearing Chair after consultation with the Panel.

16. At the Hearing on August 15, 2005, Counsel for the Student made an oral motion to the Hearing Panel to hold the record open to receive a copy of the Student's medical/psychological records from The Menninger Clinic in Houston, Texas. Counsel for the District objected. After due consideration, on August 16, 2005, prior to the conclusion of evidence, the Panel denied Student's motion to hold the record of the due process hearing open to receive medical records.

17. The Hearing in this matter began on August 15, 2005. The Hearing was concluded, and the record was closed, on August 16, 2005, in Springfield, Missouri.

18. Exhibits were introduced by both parties and the Hearing Chair. The following documents were admitted into evidence and made a part of the record in this due process: Hearing Panel Exhibits 1 through 17; Petitioner's Exhibits ("P Ex.") 1 through 31 and 33 (as supplemented), pp. 1-655 and District Exhibits ("D Ex.") 1 through 75 (as supplemented).

Time Line

19. Student's Father filed a due process Complaint, by letter, with the Missouri Department of Elementary and Secondary Education ("DESE") dated June 10, 2005, which was received by DESE that same day. The original deadline for mailing the decision in this matter was July 25, 2005.

20. On June 28, 2005, the District requested an extension of the time lines through September 30, 2005.

21. On July 8, 2005, the Hearing Chair issued an Amended Notice of Hearing, setting the matter for hearing on August 15 and 16, 2005 in Springfield, Missouri and extended the applicable time lines to September 16, 2005 for mailing of the decision.

22. The Hearing in this matter began on August 15, 2005 and was concluded, and the record was closed, on August 16, 2005, in Springfield, Missouri.

Issues

23. The following issues were presented to the Hearing Panel for decision:

Issue 1: Did the District fail to identify the Student as a "child with a disability" consistent with the Child Find provisions of the IDEA?

Issue 2: Whether the Student's current placement at the Springfield Option Site ("SOS") is an appropriate placement in the least restrictive environment.

Facts

24. Student attended Greenwood Laboratory School, a public laboratory school located on the campus of Southwest Missouri State University, operated by the University, from kindergarten through third grade. Student attended grades four and five at St. Joseph Catholic

School, a private parochial school, in Springfield, Missouri. During grades one through five, the Student attended WINGS, a District gifted program one day per week (D Exs. 1 and 2).

25. Student's Parents are divorced. Father has physical custody of the Student and his two siblings. Student's Father testified that he suffers from bi-polar disorder and has attempted to commit suicide on two occasions. Father's illness and suicide attempts were significant concerns for the Student. Student reportedly has a troubled relationship with his Mother. Student has received psychological therapy designed to help him deal with a variety of family issues since about age eight in 1999. (D Ex. 75).

26. During school year 2002-2003, Student's sixth grade year, he was enrolled in a gifted program, the Middle Years Scholar's Program operated by the District from the opening of school until November 11, 2002. On November 11, 2002, Student was placed on Homebound services for the remainder of the school year at the request of the Student's physician, Dr. Latha Venkatesh and his Father. (D Ex. 2 and 3).

27. During school year 2003-2004, Student's seventh grade year, he was Home Schooled from the beginning of the school year until approximately January 20, 2004 and accessed the WINGS program, one day a week for 11 weeks. On or about January 20, 2004, Student began attending Cherokee Middle School in its regular education program where he continued in until he was withdrawn from the District around April 1, 2004. (D Ex. 2, and 8).

28. On April 1, 2004, Student was admitted to The Menninger Clinic's Hospital in Houston, Texas and was enrolled in the Spring Branch Independent School District ("Spring Branch"). On or about April 14, 2004, Spring Branch held a meeting to review the Student's Evaluation data; to prepare an Evaluation Report; and, to prepare an Individual Educational Program

("IEP") for the Student. Spring Branch educationally diagnosed the Student as having an Emotional Disturbance, following a medical diagnosis of Post Traumatic Stress Disorder ("PTSD") made by Dr. Mary Quinn McParland at The Menninger Clinic. (D Ex. 6-9 and 18). Following the educational diagnosis, the Student's Spring Branch IEP team prepared an IEP, determining that the Student should be placed in The Menninger Campus Hospital Class. Spring Branch prepared a Behavior Intervention Plan and Functional Behavioral Assessment for the Student. (D Ex 9). The Menninger Campus Hospital Class is a "Residential Treatment Center."

29. On June 2, 2004, while the Student was enrolled in the Spring Branch education program Father contacted the District to refer Student for screening to determine whether he was eligible to receive special education and related services from the District. Father was told that the screening process could not be conducted until the Student re-enrolled in the District. Following this conversation, the District provided a Referral Form, a copy of the Procedural Safeguards, a Notice of Action, a Parent Input/Contact Form and a Student Health Inventory to Father. (D Exs. 10-11).

30. On or around June 29, 2004, Spring Branch performed additional testing and prepared an additional evaluation of the Student at his Father's request. The Spring Branch Evaluation Report states that the Student is of average intelligence (Full Scale IQ – 110); has some discrepancies between achievement and intellectual ability in the areas of math calculation and written expression; but the academic deficiencies "are not attributable to a learning disability." On June 30, 2004, the Student's IEP Team at Spring Branch prepared a Dismissal IEP. Student was discharged from treatment at The Menninger Clinic on July 6, 2004. (D Ex. 13, 14, and 18).

31. Father offered testimony from Christopher Carlin, PhD, a psychologist, who began treating the Student on July 26, 2004, after he returned to Missouri from The Menninger Clinic, approximately three months before writing his November 1, 2004 letter to the District. (D Ex. 31). Dr. Carlin never observed the Student at school or at the SOS site. He testified that he was unable to give an opinion about whether the Student received educational benefit from the program of special education and related services provided by the District. When Dr. Carlin wrote his November 1, 2004 letter to the District he did not have records from Burrell Mental Health, Dr. McParland or Dr. Candace Moore and he had not tested the Student.

32. On July 29, 2004, Father enrolled Student at Pershing Middle School, the District middle school in his attendance area. Student's Father gave the District the paperwork needed to begin the Child Find screening process on the Student. (D Ex. 19). Sometime before September 3, 2004, the Student's Parents toured the Springfield Option Site ("SOS"). On September 3, 2004, the Student's IEP Team met to review the Child Find screening and evaluation data and to prepare an IEP for the Student if necessary. The Evaluation/IEP Team reviewed the data received from Spring Branch and The Menninger Clinic and a letter from Dr. McParland. (D Ex. 6-9, 13-14, 18). The Student's evaluation/IEP Team received information about the Student from his parents and prepared an Evaluation Report. The Team decided to accept the educational diagnosis of Emotionally Disturbed. Parents were given a Notice of Action together with a copy of the Procedural Safeguards. (D Ex. 23, 24, 25). There was no District regular education teacher involved in this Evaluation/IEP meeting.

33. On September 3, 2004, following the determination by his IEP Team that Student was eligible to receive special education and related services from the District, the IEP Team

prepared an Initial IEP for the Student. After development of the Student's IEP, the IEP Team determined that the appropriate placement for the Student was "Public Separate School (Day) Facility," Parents were given a Notice and Consent for Initial Placement. The Team determined that the site for this placement would be the SOS Program. The Student's IEP adopted the Functional Behavioral Assessment and Behavior Intervention Plan developed by his IEP Team at Spring Branch in Texas. On September 7, 2004, Father signed the Consent for Initial Placement. Student began school at SOS on September 8, 2004. (D Ex. 26, 27, 28). There was no District regular education teacher on this initial IEP team.

34. On November 3, 2004, the Student's IEP Team met at the request of Father to review the Student's IEP. Father gave the IEP Team letters from Carl Dawson and Christopher J. Carlin, PhD. Father stated that both of these individuals were providing psychological services to the Student and both recommended that the Student's placement be changed to a "therapeutic boarding school." During this IEP Meeting, the Team had a telephone conference with Dr. McParland. Father asked the IEP Team to consider IEP goals relative to the Student expressing when he does not feel safe and expressing concerns when he has them. The IEP Team agreed that Father would put together the changes he wanted in the IEP to be considered at another IEP Meeting. (D Ex. 31, 32, 33).

35. At no time before November 3, 2004 did Dr. McParland, Dr. Carlin or Mr. Dawson communicate with the District or the Student's teacher concerning the Student's progress in the educational program in the District. No District regular education teacher was involved in this IEP meeting.

36. On November 24, 2004, the Student's IEP Team met again at the request of the Parent to discussed changes to the Present Levels of Educational Performance portion of the Student's IEP. A draft IEP was prepared and the Team agreed to reconvene on November 29, 2004 to further discuss changes to the Student's IEP. (D Exs. 33-35). On November 29, 2004, the Student's IEP Team met again and agreed to revise Student's IEP, as follows:

- a. Language discussed at the November 24, 2004 meeting was added to the Present Levels of Educational Performance;
- b. Behavioral/Affective Goals were added to address Parent's concerns regarding the Student's feelings of personal safety; and,
- c. The Modification/Accommodation section of the IEP was revised to allow the Student to go to a "safe place" if he felt insecure. (D Ex. 36).

No District regular education teacher was involved in these IEP meetings.

37. On January 24, 2005, Father requested that the Student be placed on Homebound status and submitted a Homebound Instruction Application signed by the Student's physician, Dr. Candace Moore. The Application stated as the reason for the Homebound Instruction that the Student was "agitated by activities at school." (D Ex. 37). Prior to January 24, 2005 Dr. Moore did not communicate with the District or Student's teacher about the Student's progress in the educational program in the District. The Student's classroom teacher, Ms. Elizabeth Flood and other District personnel did not agree with the Homebound placement or the reasons for that placement contained in the Homebound Application. On January 27, 2005, Ms. Judy Duerkop, a District school psychologist, wrote Dr. Moore stating "that school personnel do not observe [the

Student] being ‘agitated by school activities’,” and that the Student “functions successfully at school, having positive connections with staff and some peers.” (D Ex. 38).

38. On January 31, 2005, the Student’s IEP Team met to discuss Student’s Homebound program. The IEP Team including Father agreed to revise Student’s IEP, as follows:

- a. The service minutes were changed to reflect the number of minutes provided in the Homebound program;
- b. Notation was made in the Present Levels of Educational Performance reflecting the date and nature of the Homebound services; and,
- c. Student’s placement was changed from “Public Separate School (Day) Facility” to “Homebound/Hospital,” indicating that it was pursuant to: “physician/parent request.” (D Ex 40).

No District regular education teacher was involved in this IEP meeting. On January 31, 2005, the Student’s Parents were given a Notice of Action by the District which described the Student’s change of placement. The Student began receiving Homebound services from the District on January 31, 2005.

39. On February 7, 2005, the Student’s IEP Team met to review the Student’s educational placement at the request of the Student’s Father. During that meeting:

- a. Father expressed his opinion that the Student’s placement at SOS caused an increase in Student’s anxiety levels, which resulted in problems at home;
- b. Father agreed to provide written consent for the District to obtain and review the Student’s medical records from The Menninger Clinic, Dr. Candace Moore, Dr. Christopher Carlin, Carl Dawson and Burrell Behavioral Health;

c. Placement options were discussed including a placement arranged by the Missouri Department of Mental Health (“DMH”), a “therapeutic boarding school” and a combination of the current homebound program with increased time back in the SOS program; and,

d. Father agreed to consider the options and contact the District for any further discussion. (D. Ex. 44).

No District regular education teacher was involved in this IEP meeting.

40. By letter dated February 16, 2005, Father indicated: that he had decided not to consent to the District’s review of the Student’s medical records; that he rejected the placement options involving a DMH program; and, that he rejected a continued placement in the SOS Program. (D Ex. 46). Father sent a letter from Dr. Moore which stated that the Student “will need a special schooling situation” which “should not be . . . with conduct disordered students.” (D Ex. 45). Other than the Homebound Instruction Application dated January 24, 2005 and the letter before February 16, 2005 Dr. Moore did not communicate with the District or the Student’s teacher concerning the Student’s progress in the educational program in the District.

41. Before March 2, 2005, Ms. Stephanie Worrall spoke with Father stating that Student should be returned to school as soon as possible. Ms. Worrall encouraged Father to reconsider his position on Student’s placement. On March 2, 2005, the Student’s IEP Team met to discuss the Student’s placement at the request of the Parent. During this meeting the Student’s IEP Team including Father decided to change the Student’s placement from full-time Homebound status to half-day Homebound and half-day at the SOS Program. The Student’s IEP was revised, by agreement of the Team including Father, so that (a) The service minutes were changed to reflect

the number of minutes provided in the Homebound program and the SOS Program; and, (b) Student's placement was changed from "Homebound/Hospital" full-time to "Public Separate School (Day) Facility" and "Homebound/Hospital". On March 2, 2005, the Student's Parents were given a Notice of Action by the District, describing the Student's change of placement. (D Ex. 48 and 49).

42. Soon after the March 2, 2005, IEP meeting, Father again expressed concern about the Student's placement indicating that he wanted the Student placed in a "therapeutic boarding school." (D Ex. 51). District attempted to schedule a meeting to address these concerns as follows:

a. An IEP meeting scheduled by agreement for March 18, 2005 was cancelled by Father. (D. Ex. 50, D Ex. 59);

b. An IEP meeting scheduled by agreement for April 6, 2005 was rescheduled at the request of the District due to a scheduling conflict. (D Ex. 59);

c. An IEP meeting scheduled by agreement for April 18, 2005 was cancelled by Father. (D Ex. 54); and,

d. An IEP meeting scheduled by agreement for May 9, 2005 was cancelled by Father. (D Ex. 55, D Ex. 59).

43. On July 13, 2005, after this Due Process was filed, the Student's IEP Team met to consider Father's request that Student's placement be changed. During this meeting Father indicated that he wanted a "therapeutic boarding school" placement for the Student, but was unable to identify a particular program that he believed would be an appropriate placement for the Student. Members of the Student's IEP Team from the District rejected the proposed change

in placement. On July 19, 2005, the District provided the Student's Parents with a Notice of Action-Refused stating that the District rejected the proposed "therapeutic boarding school" placement "because the student is currently making appropriate progress toward mastery of current goals/objectives." A copy of the Procedural Safeguards was given to Parents. (D Ex. 61). No District regular education teacher was involved in this IEP meeting.

44. The SOS Program is on the campus of Boys/Girls Town of Missouri, a multi-building facility located in Springfield, Missouri. It has eight classrooms in six buildings on the campus. Five classrooms are located in the cottages, where students assigned to the Boys/Girls Town facility by the State of Missouri live. Three classrooms, including the classroom taught by Ms. Elizabeth Flood, are located in the Mowrer Building together with the office of the SOS Director, Stephanie Worrall. The Boys/Girls Town of Missouri is a residential treatment center, for children generally placed at the facility by the Missouri Department of Social Services or the Missouri Court system. The SOS program serves students who are residents of Boys/Girls Town and students who live within the District placed in the SOS Program by the District through the IEP process. Some residents of Boys/Girls Town attend classes in the District's regular school buildings; others are students in the SOS Program.

45. The Administrator of the SOS Program, Stephanie Worrall, supervised the program for the last two years. Ms. Worrall has a bachelor's degree in elementary education, a Master's degree in special education-severe needs affective and an Ed.S. degree in educational administration. Previously Ms. Worrall taught for four years at the Tennyson Center for Children and Families, a Residential Treatment Center in Denver, Colorado and taught a BD/ED classroom in a Colorado public school. Ms. Worrall was the Educational Administrator for

Community Cares, a Residential Treatment Facility located in Englewood, Colorado. The Student's classroom teacher during 2004-2005 school year was Elizabeth Flood. Ms. Flood has worked for the District for 10 years; five years as a classroom teacher in the SOS Program. Ms. Flood has taught in cross-categorical special education classrooms at the high school and elementary school levels; she has a Missouri, cross-categorical pre-K-12 teaching certification.

46. Three SOS classrooms in the Mowrer Building, including Ms. Flood's classroom, have between four, but not more than seven students at any time during school year 2004-2005. No more than 21 SOS students were in the Mowrer Building during the school year. Ms. Flood's classroom averaged five students during the 2004-2005 school year. Eight adults were assigned by the District to the Mowrer Building, including one teacher and one aide in each classroom, Ms. Worrall and her secretary. Approximately half of the 21 student places in the Mowrer Building classrooms are reserved for students, like the Student, who are not residents of Boys/Girls Town.

47. During school year 2004-2005, the students in the SOS Program were medically diagnosed with mood disorders, such as bipolar disorder, post traumatic stress disorder ("PTSD"), depression or other depressive disorders. Approximately 20% to 30% of the SOS Students had a medical diagnosis of PTSD. During the school year, Ms. Flood's class had three students, including Student, who were medically diagnosed with PTSD. Students with a medical diagnosis of a conduct disorder are not generally placed in the SOS Program, except students with a concurrent mood disorder diagnosis. The staff at the SOS Program is experienced in dealing with Students with a medical diagnosis of PTSD. Ms. Worrall has worked with over 50 students who had a PTSD diagnosis.

48. Dr. Carlin testified at the Hearing that typically residential treatment centers provide treatment to mood disordered children. In the Student's case, a small classroom setting with five or so other students, a teacher and an aide would be much less likely to trigger the Student's anxiety than a classroom with conduct disordered children.

49. Parents were happy with Ms. Flood as a teacher. The Student made educational progress during school year 2004-2005. Father testified that the Student "made some progress" educationally, and "made educational progress in some areas but not in others." Ms. Flood testified that in her opinion, the Student made educational progress in her classroom.

50. At the end of the first semester of school year 2004-2005, Ms. Flood and Ms. Worrall prepared a Review of Progress dated January 31, 2005. (D Ex. 42) which shows Student's progress:

a. Student received an "A" in Language Arts, Reading and Science; a "B" in Social Studies and Art; and, a "C" in Math. Father was pleased with Student's first semester grades.

b. Father "reported that he is pleased with [the Student's] progress during this school year."

c. Student's academic strengths included: working in a group setting or with a peer; compromising with his peers; turn-taking and dividing tasks; reading; participating in class discussions; and, following written or oral directions.

d. Student was "socially appropriate and successful in establishing relationships with others." Student was always very respectful to Ms. Flood.

e. Student reportedly established “trusting relationships” with the staff which was indicated by his willingness to talk openly with them, appropriately teasing or joking with the staff, expressing positive feelings about his teachers and an obvious desire to spend time interacting in casual conversation with them.

f. Student reportedly established appropriate relationships with his peers as evidenced by rising his socialization time outside of his class to visit with other students, joking, having conversations and sharing music with classmates.

g. Student consistently earned nearly every point available to him on the classroom point system and had 126 points “banked” by Christmas. In order to accommodate his large number of points, Ms. Flood and Ms. Worrall developed a special intervention which allowed the Student to bring and play his X-box with a peer.

h. Several interventions were designed to help Student decrease his anxiety or feel safe. During the semester, the Student appropriately used these interventions on several occasions.

51. During the 2004-2005 school year, the Student experienced several events outside-of-school that may have impacted his education (D Ex. 58 and 62). At the end of 2004-2005 school year, Ms. Flood and Ms. Worrall prepared another Review of Progress dated June 21, 2005. (D Ex. 58). The Review indicates the following progress:

a. Student received an “A-” in English and Math; a “B” in Reading; and a “C” in Art. Father felt that the Student’s second semester grades were good and understood that his part-time attendance had an effect on his grades.

b. Student improved in math with regard to work completion and attempting all assignments and was “much more comfortable” asking for assistance from his peers or the teacher. Student seemed to be less anxious about math.

c. Student displayed academic strengths in participating in class discussions, working with a group or peers to achieve a common goal, turn-taking and reading.

d. Student continued to develop positive peer relationships with new peers and appeared to easily reestablish rapport with students who had been in the class prior to February 2, when he left on Homebound. Several times Student asked to stay past the time he would usually leave to socialize with his peers.

e. Student earned enough points to be allowed to bring his X-box to school to share with his peers. During these and other occasions, the Student was observed to appropriately interact with the other students.

f. Student continued to display appropriate relationships with the school staff. On occasions when he became agitated at school, he appropriately requested to see the school psychologist or sought out other staff members with whom to discuss the matter.

52. The Student’s IEP and educational placement in the SOS Program were reasonably calculated to provide him with educational benefit and did provide him with FAPE. The Student made educational progress during school year 2004-2005 in the program of special education and related services provided by the District.

53. Consistent with the Child Find requirements of the IDEA, each year the District (D Ex. 63):

a. Publishes a Public Notice in a local newspaper regarding its Child Find activities, describing its programs of special education and related services and providing notification regarding the Family Educational Rights and Privacy Act.

b. Publishes a Public Notice on a local cable channel regarding its Child Find activities, describing its programs of special education and related services and providing notification regarding the Family Educational Rights and Privacy Act.

c. Publishes a Public Notice in the Student Handbooks regarding its Child Find activities, describing its programs of special education and related services and providing notification regarding the Family Educational Rights and Privacy Act.

d. Publishes a Public Notice in each Administrative Office of each building operated by the District regarding its Child Find activities, describing its programs of special education and related services and providing notification regarding the Family Educational Rights and Privacy Act.

54. During the years Student lived in the District, the District routinely received Child Find referrals from Springfield Catholic Schools, including St. Joseph's Catholic School; from Greenwood Laboratory School; from Head Start Programs; from Burrell Mental Health; and from physicians such as Dr. Venkatesh. Prior to June 2, 2004, Parents did not make any written request to the District seeking that the District provide special education and related services to the Student. Prior to June 2, 2004, no District employee referred the Student for screening to determine if he needed special education and related services. St. Joseph's Catholic School; Greenwood Laboratory School, Burrell Mental Health or Dr. Venkatesh did not refer the Student for screening to determine if he needed special education and related services.

II. CONCLUSIONS OF LAW

1. The District is an Urban Missouri Public School District, which is organized pursuant to Missouri statutes.
2. The Student is now and has been a resident of District during all times relevant to this due process proceeding, as defined by Section 167.020 RSMo. He is a child with a disability and is eligible for special education services in the District.
3. The Individuals With Disabilities Education Act, (“IDEA”), its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act* (2005), (“State Plan”) set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the District in providing special education and related services to students with disabilities.
4. The State Plan was in effect at all material times during this proceeding. The State Plan constitutes regulations of the State of Missouri which further define the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the District, in providing special education and related services to students with disabilities.
5. The purpose of the IDEA and its regulations is: (1) “to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs”; (2) “to ensure that the rights of children with disabilities and their parents are protected”; and, (3) “to assess and ensure the effectiveness of efforts to educate those children.” 34 C.F.R. § 300.1.

6. The IDEA requires that a disabled child be provided with access to a “free appropriate public education.” (“FAPE”) *Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982). The term “free appropriate public education” is defined by 34 C.F.R. § 300.8 as:

“...the term ‘free appropriate public education’ means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include preschool, elementary school, or secondary school education in the State involved; and,
- (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340 – 300.350.”

A principal component of the definition of FAPE is that the special education and related services provided to the student with a disability, “meet the standards of the SEA” (State Board of Education), and “the requirements of this part”. 34 C.F.R. Part 300.

7. If Parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8th Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998).

8. The District first considered the Student to be a “Child with a Disability,” as that term is defined by the IDEA, its Regulations and the State Plan, in September, 2004, after Father requested that the Student be screened for educational disabilities. The District accepted the Student’s educational diagnosis by Spring Branch of “Emotionally Disturbed.”

9. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O’Toole by O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998).

10. The IDEA requires the District to provide a child with a disability with a “basic floor of opportunity. . . which [is] individually designed to provide educational benefit to the handicapped child.” *Rowley, supra.*, 102 S.Ct. 3034, 3047. The IDEA does not require that a school district “either maximize a student’s potential or provide the best possible education at public expense,” *Rowley, supra.*, 102 S.Ct. 3034, 3049; *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 612; (8th Cir. 1997); and, *A.W. v. Northwest R-1 School District*, 813 F.2d 158, 163-164 (8th Cir. 1987). The IDEA does not require a school district to provide a program that will, “achieve outstanding results,” *E.S. v. Independent School District No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); that is “absolutely [the] best”, *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 505 (6th Cir. 1998); that will provide “superior results,” *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 613; or, that will provide the placement the parents prefer. *Blackmon v. School District of Springfield, R-12*, 198 F. 3d 648, (8th Cir. 1999); *E.S., supra.* 135 F.3d 566, 569. See also: *Tucker, supra.*, 136 F.3d 495, 505; and *Board of*

Education of Community Consolidated School District No. 21 v. Illinois State Board of Education, 938 F.2d 712, 716-17 (7th Cir. 1991).

11. Parents are not satisfied with the educational program and placement in Student's last IEP that they had deemed to be appropriate. The burden now rests on the Parents to demonstrate that: (a) the Student has not received FAPE in his placement at SOS; and, (b) that there is a "therapeutic boarding school" which is an appropriate placement for the Student. *Devine v Indian River County School Board*, 249 F.3d 1289, 1292 (11th Cir 2001).

12. Parents challenge Student's current (2003) IEP and educational placement of public separate day facility. The key inquiry is whether the School District's placement is appropriate for Student "[A]lthough the IDEA mandates individualized 'appropriate' education for disabled children, it does not require school district to provide a child with the specific educational placement that her Parent prefer." *Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 58 (8th Cir. 1999). "The issue is whether [the school district's] placement [i]s appropriate, not whether another placement would also be appropriate, or even better for that matter." *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1057 (7th Cir. 1997).

13. Under the IDEA and Missouri State Plan, when a student's IEP, including his placement, is reasonably calculated to provide him with educational benefit, a more restrictive residential placement is neither required nor appropriate.

To assess whether a residential placement is appropriate, a determination must be made whether full time residential placement is necessary for educational purposes as opposed to medical, social, or emotional problems that are separable

from the learning process. Under the Act, residential placement is ‘at no cost to the parents of the child’ only if it is necessary for educational purposes.

Kings Local School District, Board of Education v. Zelazny, 325 F.3d 724, 730 (6th Cir. 2003), citing *Tennessee Department of Mental Health and Mental Retardation v. Paul B.*, 88 F.3d 1466, 1471 (6th Cir. 1996).

14. The Hearing Panel is obliged to give deference to decisions made by the School District’s professional educators. “[W]hen reviewing an IEP [courts and hearing panels] must keep in mind that the state and local educational agencies are deemed to possess expertise in education policy and practice.” *Burilovich v. Board of Ed. of the Lincoln Consol. Schools*, 208 F.3d 560, 567 (6th Cir. 1999); *see also Fort Zumwalt Sch. Dist. v. Clynes*, 119 F.3d at 610 (stating that courts should reject a reviewing officer’s analysis if it does not appear to give sufficient weight to the views of the professional educators).

15. None of the IEP Teams convened by the District for Student included a regular education teacher. The IDEA requires a regular education teacher at the initial IEP and thereafter if the student will be accessing the regular education curriculum. The Panel does not believe that the absence of a regular education teacher has resulted in an inappropriate IEP for this Student to date, but believes that in the future a regular education teacher should be included in the IEP team to assure appropriate access to the regular curriculum and proper preparation for return to regular education.

16. As long as a student is receiving educational benefit in the placement that is determined to be appropriate by the IEP Team, it is not the responsibility of a public school district to remedy problems experienced by a student at home by placing the child in a residential

placement. *Swift v Rapides Parish Public School System*, 812 F. Supp. 666, 673 (W.D. La. 1993), *aff'd* 12 F.3d 209 (5th Cir. 1993). This is true even if the child: had a history of “throwing tantrums” at home, *Gonzalez v Puerto Rico Department of Education*, 254 F.3d 350, 352 (1st Cir. 2001); exhibited “serious behavioral problems at home,” *Devine, supra.*, 249 F.3d, 1292; had “quite severe” behavior problems at home, *Hall v Shawnee Mission School District*, 856 F. Supp. 1521, 1528 (D. Kansas 1994); was behaviorally “unpredictable and sometimes dangerous” away from school, *Ciresoli v. M.S.A.D. No. 22*, 901 F. Supp. 378, 386 (D. Maine 1995); was “uncontrollable” and a “difficult child” at home, *Swift, supra.*, 812 F. Supp., 670; or, exhibited behavior at home that made his mother’s life a “living hell,” *Kings Local School District, supra.*, 325 F.3d, 730.

17. The IDEA requires that each disabled child be educated in the “least restrictive environment” (“LRE”):

To the maximum extent appropriate, children with disabilities...are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5). The IDEA’s preference to educate handicapped children in classes with non-handicapped children “is normally articulated as ‘mainstreaming’ or educating the child in the least restrictive environment.” *Reese v. Board of Educ. of Bismarck R-V Sch. Dist.*, 225 F. Supp. 2d 1149, 1159 (E.D. Mo. 2002). “Despite the statutory preference for mainstream

placements, the IDEA recognizes that some disabled students need full-time care in order to receive educational benefits.” *Independent Sch. Dist. v. A.C.*, 258 F.3d 769, 774 (8th Cir. 2001). “The Act thus provides for the education of some handicapped children in separate classes or institutional settings.” *Rowley*, 458 U.S. at 181, fn. 4. The IDEA defines “special education” to include “instruction conducted in the...home, in hospitals and institutions, and in other settings.” 20 U.S.C. §1401(25); *see also* 34 C.F.R. §300.26.

18. To implement the concept of LRE, each state is required to have on file procedures which ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” 34 C.F.R. §300.130. Specifically, 34 C.F.R. §300.551 provides that the continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.

19. To comply with 34 C.F.R. §300.551, the Missouri State Plan for Special Education specifically prescribes a continuum of special education placements, which includes public separate day facilities. Section 162.735 R.S.Mo. underscores the appropriateness of placing a disabled child in a public separate day facility when it provides:

The state department of elementary and secondary education may assign severely handicapped children...to state schools for severely handicapped children.... Furthermore, the state board of education may contract for the education of a severely handicapped child with another public agency or with a private agency when the state department of elementary and

secondary education determines that such an arrangement would be in the best interests of the severely handicapped child.

20. Courts recognize that separate schools are a permissible method of utilizing scarce resources and centralizing services to provide services to the severely disabled student population. *See St. Louis Developmental Disabilities Treatment Center Parent Ass'n v. Mallory*, 591 F. Supp. 1416 (W.D. Mo. 1984) (holding that Missouri's system of providing separate schools for the severely disabled does not violate the IDEA or the Constitution).

21. The program of special education and related services provided to the Student by the District at the SOS program during 2004-2005 school year was reasonably calculated to provide him with educational benefit and it did provide him with FAPE.

22. The State Plan requires Missouri local school districts to meet the following Child Find requirements:

- a. Publishing one (1) public notice in local newspapers that describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21);

- b. Airing one (1) public notice on local radio and/or television stations, during general viewing/listening hours, which describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21);

- c. Placing posters/notices in all administrative offices of each building operated by the school district that describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21);

d. Providing written information through general distribution to the parents/guardians of students enrolled in the school district which describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21).

(State Plan, Regulation III – Identification and Evaluation, page 12).

23. The District met the Child Find requirements set forth in the IDEA and State Plan.

24. The District's actions regarding the education of Student and in response to his Parents at all times met the substantive requirements of the IDEA and State Plan.

25. The District's actions regarding the education of the Student and in response to his Parents met the procedural requirements of the IDEA and State Plan. There is no competent evidence on the record before this Hearing Panel that any such alleged procedural inadequacy impeded the Student's receiving FAPE; significantly impeded the Parents' opportunity to participate in the decision making process regarding the provision of FAPE for the Student; or, caused Student to be deprived of educational benefits.

III. ORDER

The Hearing Panel finds that the District did not violate the Child Find requirements of IDEA in the 2003-2004 school year. The Hearing Panel Finds that the District is providing Student with a Free Appropriate Education in the Least Restrictive Environment, and a therapeutic boarding school is not an appropriate placement for Student. Therefore, the due

process Complaint filed by the Student's Father is dismissed with respect to the two issues heard by this Hearing Panel.

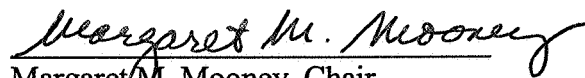
IV. APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter. You have a right to request review of this decision. Specifically, you may request review as follows:

"1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within forty-five (45) days after the mailing or delivery of the notice of the agency's final decision....

3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence..."

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. §300.512.


Margaret M. Mooney, Chair

Terry Allee, Panel Member

Leigh Bush, Panel Member

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Mailed by certified mail, return receipt requested, this 16th day of September, 2005 to Les Boyle, National Avenue Office Park, 1911 South National, Suite 303, Springfield, MO 65804 and Ransom A. Ellis, III, Ellis, Ellis, Hammons & Johnson, P.C., The Hammons Tower, Suite 600, 901 St. Louis Street, Springfield, MO 65806-2505.

Margaret M. Mooney